

UNITED STATE DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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RUSSELL VAN DUYNE,

Plaintiff,

-against-

THE CITY OF NEW YORK and THE NEW YORK CITY  
POLICE DEPARTMENT, P.O. COTE AND P.O. GREEN,

Defendants.  
----- x

**ANSWER**

**JURY TRIAL DEMANDED**

10 CV 925 (JBW) (SMG)

Defendant City of New York, by its attorney, Michael A. Cardozo, Corporation Counsel of the City of New York, for its answer to the complaint, respectfully alleges, upon information and belief, as follows:

1. Denies the allegations set forth in paragraph “1” of the complaint, except admits that plaintiff purports to invoke the Court’s jurisdiction, base venue, proceed and seek relief as stated therein.

2. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “2” of the complaint.

3. Denies the allegations set forth in paragraph “3” of the complaint, except admits that the City of New York is a municipal corporation and that Cote and Green are employed by the City of New York in the New York City Police Department. Defendant further denies knowledge and information sufficient to form a belief as to the truth of the allegations concerning the residence of Police Officers Cote and Green.

4. Denies the allegations set forth in paragraph “4” of the complaint.

5. Denies the allegations set forth in paragraph “5” of the complaint, except admits that Police Officers Cote and Green are employed by the City of New York in the New York City Police Department.

6. Denies the allegations set forth in paragraph “6” of the complaint.

7. Denies the allegations set forth in paragraph “7” of the complaint.

8. In response to the allegations set forth in paragraph “8” of the complaint, defendant repeats and realleges the responses set forth in paragraphs “1” through “7” of this answer as if fully set forth herein.

9. Denies the allegations set forth in paragraph “9” of the complaint.

10. Denies the allegations set forth in paragraph “10” of the complaint.

11. Denies the allegations set forth in paragraph “11” of the complaint.

12. Denies the allegations set forth in paragraph “12” of the complaint.

13. Denies the allegations set forth in paragraph “13” of the complaint.

14. Denies the allegations set forth in paragraph “14” of the complaint.

15. Denies the allegations set forth in paragraph “15” of the complaint.

16. Denies the allegations set forth in paragraph “16” of the complaint.

17. In response to the allegations set forth in paragraph “17” of the complaint, defendant repeats and realleges the responses set forth in paragraphs “1” through “16” of this answer as if fully set forth herein.

18. Denies the allegations set forth in paragraph “18” of the complaint and respectfully refers all questions of law to the Court.

19. Denies the allegations set forth in paragraph “19” of the complaint.

20. Denies the allegations set forth in paragraph “20” of the complaint.

21. Denies the allegations set forth in paragraph “21” of the complaint.

22. Denies the allegations set forth in paragraph “22” of the complaint.

23. Denies the allegations set forth in paragraph “23” of the complaint.

**AS AND FOR A FIRST AFFIRMATIVE DEFENSE:**

24. The complaint fails to state a claim upon which relief can be granted.

**AS AND FOR A SECOND AFFIRMATIVE DEFENSE:**

25. Defendant has not violated any rights, privileges or immunities under the Constitution or laws of the United State or the State of New York or any political subdivision thereof, nor has defendant violated any Act of Congress providing for the protection of civil rights.

**AS AND FOR A THIRD AFFIRMATIVE DEFENSE:**

26. Any injury alleged to have been sustained resulted from plaintiff’s own culpable or negligent conduct and/or the intervening conduct of third parties and was not the proximate result of any act of the defendant.

**AS AND FOR A FOURTH AFFIRMATIVE DEFENSE:**

27. Plaintiff provoked any incident.

**AS AND FOR A FIFTH AFFIRMATIVE DEFENSE:**

28. Punitive damages cannot be assessed against the City of New York..

**AS AND FOR A SIXTH AFFIRMATIVE DEFENSE:**

29. At all times relevant to the acts alleged in the complaint, defendant City, its agents and officials, acted reasonably and properly in the lawful exercise of their discretion. Therefore, they are entitled to governmental immunity from liability.

**AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE:**

30. The individual defendant, John Hoder, has not violated any clearly established constitutional or statutory right to which a reasonable person would have known and, therefore, is protected by qualified immunity.

**AS AND FOR AN EIGHTH AFFIRMATIVE DEFENSE:**

31. Plaintiff may have failed to comply with the conditions precedent to suit.

**AS AND FOR A TENTH AFFIRMATIVE DEFENSE:**

32. Plaintiff failed to comply with New York General Municipal Law § 50-e and New York General Municipal Law § 50-i.


**AS AND FOR AN ELEVENTH AFFIRMATIVE DEFENSE:**

33. This action may be barred in whole or part, by the applicable statute of limitations period.

WHEREFORE, defendant City of New York respectfully requests judgment dismissing the complaint in its entirety, together with the costs and disbursements of this action, and such other and further relief as the Court deems just and proper.

Dated: New York, New York  
July 23, 2010

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By:   
Diep Nguyen  
Assistant Corporation Counsel

To: Gary Rawlins, Esq., (By ECF)  
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New York, New York 10004

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RUSSELL VAN DUYNE,  Plaintiff,  -against-  THE CITY OF NEW YORK and THE NEW YORK CITY POLICE DEPARTMENT, P.O. COTE AND P.O. GREEN,  Defendants.
<b>ANSWER ON BEHALF OF DEFENDANT CITY OF NEW YORK</b>
<b><i>MICHAEL A. CARDOZO</i></b> <i>Corporation Counsel of the City of New York</i> <i>Attorney for Defendant City of New York</i> <i>100 Church Street</i> <i>New York, New York 10007</i>  <i>Of Counsel: Diep Nguyen</i> <i>Tel: (212) 341-9848</i> <i>NYCLIS No.</i>
<i>Due and timely service is hereby admitted.</i>  <i>New York, N.Y. ...., 2010</i>  <i>..... Esq.</i>  <i>Attorney for .....</i>